

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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U.S. UNDERWRITERS INSURANCE
COMPANY,

Plaintiff,

-against-

EFTHIMIOS ZISMOPoulos,
CHRISANTH TZIVAS, RALPH PALMA,
SILVANA PALMA and THE CITY OF
NEW YORK

Defendants.

NOT FOR PUBLICATION
MEMORANDUM & ORDER

07-CV-4684 (CBA)

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AMON, United States District Judge

Plaintiff U.S. Underwriters Insurance has filed suit against defendants Efthimios Zismopoulos, Chrisanthy Tzivas, Ralph Palma and Silvana Palma. Plaintiff claims that defendants Efthimios Zismopoulos and Chrisanthy Tzivas, its insureds, breached their insurance contract by failing to provide timely notice to U.S. Underwriters of a claim by defendants Ralph and Silvana Palma. U.S. Underwriters seeks a declaration upholding its disclaimer of insurance coverage of Zismopoulos and Tzivas, and stating that U.S. Underwriters has no obligation to any of the defendants. Defendants Ralph and Silvana Palma moved for summary judgment against the U.S. Underwriters pursuant to Rule 56 of the Federal Rules of Civil Procedure.

Oral Argument was held on defendants Ralph and Silvana Palma's motion for summary judgment on July 17, 2008. For the reasons stated on the record, defendants' motion is denied. The Court finds that there is an issue of material fact regarding the Palmas' diligence in attempting to ascertain the identity of the insurer and notifying U.S. Underwriters of their claim.

See Steinberg v. Hermitage Ins. Co., 26 A.D.3d 426, 428 (N.Y. App. Div. 2006); Allstate Ins. Co. v. Marcone, 29 A.D.3d 715, 717 (N.Y. App. Div. 2006); Appel v. Allstate Ins. Co., 20 A.D.3d 367, 368 (1st Dep't 2005); Denneney v. Lizzie's Buggies, Inc., 306 A.D.2d 89, 89 (N.Y. App. Div. 2003); Walters v. Atkins, 179 A.D.2d 1067, 1068 (N.Y. App. Div. 1992); Lauritano v. American Fid. Fire Ins. Co., 3 A.D.2d 564, 568 (N.Y. App. Div. 1957).

Accordingly, the parties are required to inform the Court whether they consent to a trial of this issue before Magistrate Judge Roanne L. Mann on the limited issue of the Palmas' diligence no later than July 31, 2008.

SO ORDERED.

Dated: Brooklyn, New York
July 17, 2008

s/CBA

Carol Bagley Aron
United States District Judge